The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the charter of the House Committee on Un-American Activities empowers it to conduct an inquiry into the Communist Party's infiltration and penetration of the field of education.

2. Whether the action of the subcommittee in interrogating petitioner on this subject violated his constitutional rights under the First Amendment.

3. Whether petitioner's conviction may be attacked on the ground that the Committee members who questioned him had improper motives.

STATUTE AND RULE INVOLVED

2 U.S.C. 192 (R.S. 102, as amended) and the pertinent provisions of Rule XI of the House of Representatives, H. Res. 5, 83d Cong., 1st sess., 99 Cong. Rec. 18, are set forth in Appendix A to the amended petition for certiorari (Pet. 13–14).

STATEMENT

Petitioner was charged in a twenty-six-count indictment (J.A. 3a–17a) with having refused, in violation of 2 U.S.C. 192, to answer twenty-six questions, pertinent to the matter under inquiry, put to him by a subcommittee of the Committee on Un-American Activities of the House of Representatives.[2] The

[2] The Committee had reported the petitioner's contumacy to the House of Representatives (100 Cong. Rec. 11602), and the House resolved that the Committee's report be certified to the United States Attorney. H. Res. 665, 83d Cong., 2d sess., set forth at 100 Cong. Rec. 11608.

questions set out in counts 1 through 11 dealt with alleged Communist activities at Harvard University and with petitioner's knowledge and information on this subject. The questions set out in counts 12 through 20 relate to petitioner's connection with a pamphlet entitled "Operation Mind," which called upon the people of Detroit to oppose the Committee's presence in the Detroit area. The questions in the remaining counts dealt, *inter alia,* with certain associational activities of the petitioner and included questions as to whether the petitioner was then, or ever had been, a member of the Communist Party (counts 25 and 26). Petitioner, having waived his right to a trial by jury (J.A. 1a), was found guilty by the court, which treated the twenty-six counts as charging only one offense (J.A. 68a). He was sentenced to six months' imprisonment and to pay a fine of $250 (J.A. 70a–71a). The Court of Appeals affirmed.

The pertinent facts may be summarized as follows:

On February 25, 1953, the Committee on Un-American Activities of the House of Representatives commenced a series of public hearings in connection with an investigation which it was conducting into "Communist Methods of Infiltration" into the field of "Education" (G. Ex. 7).[3] The aims, purposes and objectives of the committee were fully set forth by its chairman at the outset of the hearings. The statement concluded:

[3] Government Exhibit 7 is the printed transcript (part 1) of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., February 25, 26, and 27, 1953, entitled, *Communist Methods of Infiltration. (Education).*

> The committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession. Therefore, the objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party [J.A. 56a–57a; G. Ex. 7, p. 3].

The Committee first called a number of witnesses who testified voluntarily concerning their knowledge of Communist Party work in the field of education. Illustrative of this testimony was that of the first witness, Dr. Robert Gorham Davis, who stated that, from 1937 to 1939, he was a member of a Communist cell on the campus of Harvard University which included faculty members, teaching fellows and graduate students (G. Ex. 7, pp. 4, 6). The members of this cell, Davis testified, would seek to attain positions of leadership in various organizations including the Teacher's Union (*id.*, pp. 10, 30) with the object that the policies of such organizations "be as close to the policies desired by the Communist Party as possible" (*id.*, p. 9). Dr. Davis further testified that the same techniques are being followed by Communists today (*id.*, pp. 13, 41).

During 1954, the Committee continued its inquiry into Communism in education. On May 10, 1954, petitioner, who was then a teacher at the University

of Michigan and who had been a student at Harvard University from 1942 to 1945 and had received a graduate degree there in 1950, was called by the subcommittee. He advised the subcommittee that he did not desire to have counsel (G. Ex. 8, p. 5348).[4] He testified that he was a teaching fellow at Harvard University from 1947 to 1948 (*id.*, p. 5353), but he refused to answer questions relating to Communist Party activity at Harvard (counts 1, 2) or to state whether he knew Dr. Robert Gorham Davis (count 3). Petitioner was then advised that Dr. Davis had testified before the Committee on February 25, 1953 regarding the conduct of Communist Party affairs at Harvard University at "a much earlier period" (*id.*, p. 5354), and that the Committee was "very anxious to investigate that situation fully and at as late a period as possible". A member of the Committee further stated that the Committee was considering "some proposed legislative proposals" and that answers that might be given by the petitioner "will be information the committee can use to very good effect" (*id.*, p. 5355). Petitioner persisted in his refusal to answer any question concerning Communist activity among the students or faculty at Harvard University (counts 4, 5) or concerning his membership in the Wendell Phillips Club of the Communist Party in Cambridge (count 6).

[4] Government Exhibit 8 is the printed transcript of the Hearing before the Committee on Un-American Activities, House of Representatives, 83d Cong., 2d sess., May 19, 1954, entitled, *Investigation of Communist Activities in the State of Michigan—Part 6 (Lansing)*.

In response to questions concerning the preparation and distribution of a pamphlet entitled "Operation Mind," which bore the notation, "distributed by University of Michigan Council of Arts, Sciences, and Professions, and Civil Liberties Committee of the University of Michigan" (counts 12–20), petitioner replied that he would not answer because it concerned his association with political groups (G. Ex. 8, pp. 5359–5360), stating further:

> I have taken pains to inform myself on all important political issues. I will not discuss with the committee what conclusions I reached or what methods I used to inform myself [*id.*, p. 5365].

Petitioner also refused to state whether he had solicited membership in the Communist Party of any faculty member or student of the University of Michigan (count 24), although specifically directed by the Committee to answer (G. Ex. 8, p. 5371).[5]

When questioned by the Committee as to his own past or present membership in the Communist Party (counts 25–26), petitioner refused to answer and specifically disclaimed reliance on the privilege against self-incrimination (G. Ex. 8, p. 5371).[6]

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[5] Petitioner was expressly directed by the Committee to answer the questions set out in counts 1 (G. Ex. 8, p. 5349), 13 (*id.*, p. 5360), 15 (*id.*, p. 5361), 18 (*id.*, p. 5363), 22 (*id.*, p. 5368), and 24 (*id.*, p. 5371).

[6] Petitioner at all times based his refusals on First Amendment grounds (G. Ex. 8, pp. 5360–5361, 5364, 5371; Pet. 4) and upon his assertion that the questions asked involved "political beliefs or associations" (*id.*, p. 5351; Pet. 4–5).

ARGUMENT

Pending the outcome of *Barenblatt* v. *United States*, 252 F. 2d 129 (C.A.D.C.), certiorari granted, 356 U.S. 929, the Court of Appeals withheld decision in the instant case. Following this Court's affirmance in *Barenblatt*, 360 U.S. 109, it affirmed petitioner's conviction on the basis of the criteria set forth in the *Barenblatt* decision. We submit that *Barenblatt* is fully dispositive of the issues raised in this petition.

1. In *Barenblatt*, this Court affirmed the contempt conviction of a former teaching fellow of the University of Michigan who had refused to answer questions put to him by the same subcommittee which called this petitioner. The unanswered questions in *Barenblatt*, like many of those here, related to the witness' participation in, or knowledge of, alleged Communist Party activities at educational institutions (360 U.S. at 114).

Barenblatt had attacked the authority of the Committee to conduct an inquiry into the Communist Party's infiltration and penetration of the field of education (360 U.S. at 115). This Court reviewing the history of congressional action, held (pp. 120–121):

> In light of this long and illuminating history it can hardly be seriously argued that the investigation of Communist activities generally, and the attendant use of compulsory process, was beyond the purview of the Committee's intended authority under Rule XI.

The authority of the Subcommittee to investigate Communism in education, it concluded, was "unassailable" (*id.*, at 122).

Petitioner's attack upon the authority of the same subcommittee, engaged in a continuing investigation of the identical subject, is but an effort to relitigate an issue decided only last Term.

2. Petitioner argues that his rights under the First Amendment were violated by the investigation (Pet. 6–12). But, as the court below correctly ruled, the same contention was rejected in *Barenblatt* in which this Court unequivocally held that "investigatory power in this domain [Communist activity in the United States] is not to be denied Congress solely because the field of education is involved" (360 U.S. at 129).

3. Nor is this a case, as petitioner suggests, in which it may be said that the legislative body was engaged simply in "exposing" or "punishing" the witness.

Petitioner's contention that the decision in *Barenblatt* conflicts with the holding in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, is unsound. In *Barnette*, this Court struck down a statute which would require a schoolchild to salute the flag under penalty of expulsion and criminal prosecution of the parents (319 U.S. at 629), regardless of the religious beliefs of the child or the parents. The Court stated "* * * freedoms of speech and of press, of assembly, and of worship * * * are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect" (*id.*, at 639).

The situation is indistinguishable from that in *Barenblatt*, a case in which the Court concluded that "the primary purposes of the inquiry were in aid of the legislative process" and that "motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served" (360 U.S. at 133). Here, unquestionably, the subcommittee had reason to believe that petitioner possessed information directly relevant to its legislative purpose (J.A. 41a–53a), a fact which was pointedly made known to the petitioner (G. Ex. 8, pp. 5355, 5356).

Petitioner, indeed, made no objection to the subcommittee's questions on grounds of pertinency (G. Ex. 8, p. 5365); nor does he contend that he did not understand how the questions related to the subject under inquiry. Among the questions which petitioner refused to answer were questions as to his own Party membership—questions which this Court said in *Barenblatt* (360 U.S. at 125) were pertinent "beyond doubt." Thus, even if there were ground for challenging some of the twenty-six questions involved, the sentence would stand since it is less than the maximum authorized by the statute for conviction under any one count. *Barenblatt, supra*, 360 U.S. at 115; *Claassen v. United States*, 142 U.S. 140, 147; *Rogers v. United States*, 353 U.S. 53; *Whitfield v. Ohio*, 297 U.S. 431.

CONCLUSION

In essence, petitioner is asking this Court to review questions decided in the same context only last Term, after full argument and deliberation. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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